

REMARKS

Reconsideration and allowance are respectfully requested in view of the foregoing amendments and the following remarks.

Upon entry of this amendment, claims 19-28 and 34-44 are pending in the application. By this amendment, claims 19-27 and 34 have been amended and new claims 43-44 have been added.

Claims 19-28 and 34-42 are objected to because of informalities noted by the examiner. Claims 19-24 and 26-27 have been amended for clarity purposes only to overcome this objection. Accordingly, withdrawal of the objection is respectfully requested.

Claims 20 and 25 are rejected under 35 U.S.C. §101. Claims 20 and 25 have been amended for clarity purposes only to overcome this rejection. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 19-28 and 34-42 are rejected under 35 U.S.C. § 112, second paragraph. Claims 19-24, 27, and 34 have been amended for clarity purposes only to overcome this rejection. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 19-20, 22-23, 27 and 34-42 are rejected under 35 U.S.C. § 102(a) by Amarasinghe et al. This rejection is respectfully traversed.

Claim 19 is directed to a mask assembly for application of non-invasive positive pressure ventilation to a patient including a frame and a cushion provided to the frame. The frame includes a main body having at least one aperture configured to receive a supply of breathable gas under pressure. The frame includes at least one selected frame portion provided to the main body. The at least one selected frame portion is adjustable relative to the main body. The cushion is structured to provide an interface with the patient. The at least one selected frame

portion is engaged with the cushion so that the cushion is adjustable in accordance with a position of the at least one selected frame portion relative to the main body. The cushion, upon application of positive pressure, applies a force to the patient. The force is adjustable in accordance with 1) the position of the at least one selected frame portion relative to the main body for a given value of said positive pressure and/or 2) variations in the positive pressure.

Amarasinghe does not disclose the mask assembly of claim 19. Amarasinghe discloses a mask system including a shell 13, a cushion 16, and a brace 12 provided to the shell 13 to provide headgear strap attachment points 15. The brace 12 is removably attached to the shell 13 so that different braces with different headgear strap attachment points may be used with the shell 13.

The brace 12 may be formed of a malleable wire to allow some adjustment of the headgear strap attachment points and/or a stabilizing portion adapted to contact a portion of the user's face such as the forehead (e.g., see page 7, lines 7-20 and page 8, lines 1-6). However, Amarasinghe does not disclose that the brace 12 is structured to engage the cushion 16 so as to adjust the cushion 16.

Accordingly, Amarasinghe does not disclose at least one selected frame portion that is engaged with the cushion so that the cushion is adjustable in accordance with a position of the at least one selected frame portion relative to the main body as recited in claim 19. In addition, Amarasinghe does not disclose that the cushion, upon application of positive pressure, applies a force to the patient, and the force is adjustable in accordance with the position of the at least one selected frame portion relative to the main body for a given value of the positive pressure and/or variations in the positive pressure as recited in claim 19.

Withdrawal of the rejection of claim 19 is respectfully requested.

Claims 20, 22-23, and 27 are allowable by virtue of their dependence on claim 19 and additionally allowable for their recitation of additional patentable subject matter.

With respect to claim 34, Amarasinghe does not disclose a selected frame portion that is engaged with the cushion so that the cushion is adjustable in accordance with a position of the selected frame portion relative to the main body, and wherein the selected frame portion includes each lateral side of the frame, and the selected frame portion is bendable to cause each lateral side of the frame to push against sides of the cushion as recited in claim 34. In contrast, the brace 12 of Amarasinghe is not structured to engage the cushion 16 so as to adjust the cushion 16.

Withdrawal of the rejection of claim 34 is respectfully requested.

Claims 35-42 are allowable by virtue of their dependence on claim 34 and additionally allowable for their recitation of additional patentable subject matter.

Claim 21 is rejected under 35 U.S.C. § 103(a) over Amarasinghe et al. in view of Gradon et al. The Office Action relies on Gradon to teach a knob used to adjust a bridge member. This does not make up for the deficiencies noted above with respect to Amarasinghe. Accordingly, claim 21 is allowable by virtue of its dependence on claim 19 and additionally allowable for its recitation of additional patentable subject matter.

Claims 25-26 and 28 are rejected under 35 U.S.C. § 103(a) over Amarasinghe et al. in view of Hellings et al. The Office Action relies on Hellings to teach an inflatable cushion. This does not make up for the deficiencies noted above with respect to Amarasinghe. Accordingly, claims 25-26 and 28 are allowable by virtue of their dependence on claim 19 and additionally allowable for their recitation of additional patentable subject matter.

BERTHON-JONES et al.
Appl. No. 10/533,928
August 14, 2008

New claims 43 and 44 have been added. Entry and allowance of the new claims 43 and 44 is respectfully requested.

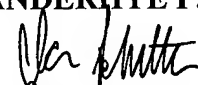
In view of the above amendments and remarks, Applicants respectfully submit that all claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


Reg. No. 51,094
for Paul T. Bowen
Reg. No. 38,009

PTB:IGS/lmr
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100